IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH.

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F.A.O.No. 162 of 1992

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1. M/s Amar Nath Aggarwal Construction Company Ltd., 80, Sector 6, Panchkula.

Versus

1. Raj Kapoor son of Ram Lubhaya Kapoor, Resident of 1558, Sector 7-C, Chandigarh.

2. Idma Laboratories SCO 12, Sector 26, Chandigarh.

3. Oriental Insurance Company, Chandigarh having its Divisional Office in Sain Market, Patiala, near Amar Ashram, Patiala (Insurer of Car No. CHA-720).

4. New India Assurance Company Ltd. Sector 17, Chandigarh through its duly constituted Attorney.

5. Braham Dass son of Santu Ram, resident of Village Lang Mauri P.O. Paranja, District Hamirpur.

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F.A.O. No. 163 of 1992.

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1. M/S Amar Nath Aggarwal Construction Company Ltd. 80, Sector 6, Panchkula.

2. Braham Dass son of Santu Ram, resident of Village Lang Mauri P.O. Paranja, District Hamirpur.

Versus

1. Champa Devi wife of Tara Chand,

2. Tara Chand son of Jodo Ram,

3. Krishna Devi daughter of Tara Chand,

4. Sunita Devi daughter of Tara Chand, (respondents No.3 and 4 minors daughters of Tara Chand, through their next friend their father Tara Chand, all residents of Village Mehmadpur, Tehsil Radaur P.O.Gandiana District Kurukshetra.

5. Idma Laboratories, S.C.O.No. 12, Sector 26, Chandigarh.

6. Oriental Insurance Co. Chndigarh having its Divisional Office in Sain Market Patiala, near Amar Ashram, Patiala (Insurer of Car No.CHA-720).

7. New India Assurance Company Ltd. Sector 17, Chandigarh through its duly constituted Attorney.

F.A.O.No. 164 of 1992.

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1. M/S Amar Nath Aggarwal Construction Company Ltd. 80, Sector 6,

Panchkula.

2. Braham Dass son of Santu Ram, resident of Village Lang Mauri P.O. Paranja, District Hamirpur.

Versus

1. Satinder Singh Thakur son of Balwant Singh, Resident of Chandigarh, Field Assistant in Idma Laboratories, SCO No.12, Sector 26, Chandigarh.

2. Idma Laboratories, SCO No.12, Sector 26, Chandigarh.

3. Oriental Insurance Company, Chandigarh having its Divisional Office in Sain Market, Patiala near Amar Ashram, Patiala (Insurer of Car No.CHA-720).

4. New India Assurance Company Limited, Sector 17, Chandigarh through its duly constituted Attorney.

F.A.O.No. 165 of 1992.

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1. M/S Amar Nath Aggarwal Construction Company Limited, 80 Sector 6, Panchkula.

2. Braham Dass son of Santu Ram, resident of Village Lang Mauri P.O. Paranja, District Hamirpur.

Versus

1. Sarabjit Kaur widow of Devinder Singh son of Ram Singh,

2. Surjit Kaur wife of Ram Singh,

3. Ram Singh son of Mukand Singh,

4. Rajinder Singh son of Ram Singh,

5. Beni minor son of Devinder Singh, through his next friend Sarabjit Kaur.

All resident of 1530, Sector 7-C, Chandigarh.

6. Idma Laboratories, S.C.O.No. 12, Sector 26, Chandigarh.

7. Oriental Insurance Company, Chandigarh having its Divisional Office in Sain Market Patiala, near Amar Ashram, Patiala. (Insurer of Car No.CHA-720).

8. The New India Assurance Company Ltd. Sector 17, Chandigarh through its duly constituted Attorney.

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F.A.O.No. 166 of 1992.

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1. M/S Amar Nath Aggarwal Construction Company Limited, 80 Sector 6, Panchkula.

2. Braham Dass son of Santu Ram, resident of Village Lang Mauri P.O. Paranja, District Hamirpur.

Versus

1. Idma Laboratories, S.C.O.No. 12, Sector 26, Chandigarh.

2. Oriental Insurance Company, Chandigarh having its Divisional Office in Sain Market, Patiala near Amar Ashram, Patiala (Insurer of Car No.CHA-720).

3. New India Assurance Company Ltd. Sector 17, Chandigarh through its duly constituted Attorney.

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F.A.O.No. 421 of 1992.

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1. Smt. Sarabjit Kaur widow of Devinder Singh son of Shri Ram Singh;

2. Smt. Surjit Kaur wife of Shri Ram Singh,

3. Ram Singh son of Shri Mukand Singh;

4. Rajinder Singh son of Shri Ram Singh,

5. Beni @ Bunny minor son of Shri (Late) Devinder Singh through his next friend and natural guardian Smt.Sarabjit Kaur widow of Devinder Singh -his mother;

All residents of House No. 1530, Sector 7-C, Chandigarh.

Versus

1. M/S Amar Nath Aggarwal Construction Company Limited, 80 Sector 6, Panchkula.

2. Braham Dass son of Santu Ram resident of Village Lang Manri P.O. Paranja District Hamirpur.

3. New India Insurance Co. Ltd. S.C.O.No.804, Mani Majra, Panchkula (Haryana) Insurer of Truck Trailer No. CHW-6324.

4. M/S Idma Laboratory, 12 Madhya Marg, Sector 26, Chandigarh, through its sole proprietor.

5. Oriental Insurance Company, Chandigarh, having its Divisional Office in Sain Market, Patiala, near Amar Ashram, Patiala (Insurer of Car No. CHA-720).

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Before: Hon'ble Mr.Justice R.S.Madan.

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Present: Shri H.S.Gill, Senior Advocate, with
Shri Hari Chand, Advocate.

Shri Deepak Suri, Advocate, with
Shri Neeraj Khanna, Advocate.

Shri Jatin Talwar, Advocate, for the Insurance Company.

Shri Ravinder Arora, Advocate, for the respondents.

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R.S.Madan, J

1. This order of mine shall dispose of F.A.Os bearing Nos. 162, 163, 164, 165, 166 and 421 of 1992, which have arisen out of the common award dated 5.9.1991 rendered by the Motor Accident Claims Tribunal, Patiala, whereby he accepted the petitions of the claimants and awarded the compensation fully detailed in the relief clause of the award, which is as under:-

i)	Raj Kapoor Vs. Amar Nath (Raj Kapoor injured).	Rs. 10,000/-
ii)	Champa Devi Vs. Amar Nath (Romesh Kumar deceased)	Rs. 48,000/-
iii)	Sarabjit Kaur Vs. Amar Nath Devinder Singh deceased)	Rs. 1,44,000/-
	1. Sarabjit Kaur (widow)	Rs.74,000/-
	2. Surjit Kaur (mother)	Rs. 20,000/-.
	3. Ram Singh (father)	Rs. 20,000/-.
	4. Beni (minor son)	Rs. 30,000/-.
iv)	Idma Laboratory Vs. Amar Nath. (Damage to Car).	Rs. 10,000/-.

2. Originally, the New Assurance Company along with M/S Amar Nath Aggarwal Construction Company Limited, Panchkula, owner and driver of Truck bearing No. CHW-6324 have filed FAO bearing No. 163, 164, 165 and 166 of 1992. FAO No. 162 of 1992, was, however, filed by the National Insurance Company Limited with owner of the truck. The award was , however, passed against the owner and the driver of the truck but the Tribunal primarily fixed the responsibility of respondent New India Insurance Company to pay the awarded amount along with interest at the rate of 12% per annum from the date of the claim petition till recovery of the same.

3. The Tribunal while disposing of issue No.1 in all the claim petitions held the driver of Car bearing No. CHA-720 and Devinder Singh, driver of truck trailer No. CHW-6324, responsible for causing the present accident and their contributory negligence was assessed by the Tribunal in the ration of 25% : 75%, respectively.

4. This has necessitated the filing of the F.A.O's bearing Nos. 163 to 166 of 1992 by the owner and driver of the Construction Company, except FAO No. 421 of 1992.

5. During the pendency of these appeals, the Hon'ble Supreme Court of India in Asha and others Versus United India Insurance Company Limited and another, 2004(1) P.L.R.-1, observed that joint appeal filed by Insurance Company along with driver and owner is not maintainable. *Reference was made to Chinnama Goerge Vs. N.K.Raju, wherein in para No.10, it was observed as follows:-*

> "There is no dispute with proposition so laid by this Court. But the insurer cannot maintain a joint appeal along with the owner or the driver if defence on any ground under Section 149(2) is not available to it. In that situation a joint appeal will be incompetent. It is not enough if the insurer is struck out from the array of appellants. The appellate court must also be satisfied that a defence which is permitted to be taken by the insurer under the Act was taken in the pleadings and was pressed before the Tribunal. On the appellate court being so satisfied the appeal may be entertained for examination of the correctness or otherwise of the judgment of the Tribunal on the question arising from/relating to such defence taken by the insurer. If the appellate court is not satisfied that any such questions was raised by the insurer in the pleadings and/or was pressed before the Tribunal, the appeal filed by the insurer has to be dismissed as not maintainable. The court should take care to ascertain this position on proper consideration so that the statutory bar against the insurer in a proceeding of claim of compensation is not rendered irrelevant by the subterfuge or the insurance company joining the insured as a co-appellant in the appeal filed by it. This position is clear

> on a harmonious reading of the statutory provisions in Sections 147, 149 and 173 of the Act. Any other interpretation will defeat the provision of sub-section (2) of Section 149 of the Act and throw the legal representatives of the deceased or the injured in the accident to unnecessary prolonged litigation at the instance of the insurer."

6. In other words the Insurance Company was held to be not competent to maintain joint appeal with the owner and the driver.

7. In para No.6 of the judgment, it was further observed whether the appeal in the absence of Insurance Company was maintainable? It was held that the award was passed both against owner and the insurance company and to that extent the owner is aggrieved party. Hence, the owner had a right to file appeal.

8. This has necessitated the New India Insurance Company to file Civil Misc. Petitions bearing Nos. 2577, 2578, 2579, 2580, 2581-CII of 2004, wherein it has prayed that the New India Insurance Company be allowed to be transposed as one of the respondents instead of appellant. This Court vide its order dated April 09, 2004 has kept these applications pending and it was ordered that the Civil Misc. applications would be disposed of at the time of final hearing of the appeal. The amended memo of parties was also filed with those Civil Misc. applications.

9. The appeal was heard and the judgment was kept reserved.

10. When the judgment was in the process of dictation, it was found that the Civil Misc. applications were moved by the Insurance Company to transpose it as one of the respondents but in the memo of parties filed by them they had inadvertently transposed the driver Braham Dass, also as one of the respondents. Learned counsel for the parties were called and were appraised that through the Civil Misc. applications the Insurance Company never intended to transpose the driver-appellant as one of the respondents. After realizing this mistake, the learned counsel for the Company moved fresh Civil Misc.

applications bearing Nos. 19005-CII to 19008-CII of 2006 along with memo of parties. The said Civil Misc. applications have been allowed vide order dated September 22, 2006 and the judgment has been reserved.

11. In view of Civil Misc. applications having been allowed, the status of the New India Insurance Company was altered from appellant to respondent and thus the award could not be challenged by the Company, as envisaged under Section 149(2) of the Motor Vehicles Act. The impugned award is now being challenged by M/S Amar Nath Aggarwal Construction Company Limited, Panchkula and the driver of the truck bearing No. CHW-6324 in F.A.O's No. 163 to 166 of 1992 on the plea that the award has been passed against the owner, driver and the Insurance Company and they have been jointly and severally held liable to pay the amount of compensation. The owner and the driver being aggrieved party by the impugned award, FAO's No. 163 to 166 of 1992 would be maintainable. Similarly FAO No. 162 of 1992, which has been filed by the owner of the truck bearing No. CHW-6324 is also maintainable.

12. FAO No. 421 of 1992 has been filed by Sarabjit Kaur and others, challenging the question of contributory negligence and enhancement of the award.

13. Before the matter is looked into, the following common facts which have necessitated the filing of the claim petitions are to be summed up as under:-

14. That on 26.2.1988 Devinder Singh, Romesh Kumar, Satinder Singh, along with Raj Kapoor were going from Chandigarh to Delhi in Car No. CHA-720 which was being driven by Devinder Singh. When the Car reached in the area of Lalru Barrier at about 5.30 A.M. Truck Trailer bearing No. CHW-6324, being driven by respondent No.2, all of a sudden stopped near Lalru barrier without giving any signal or indication. The truck trailer was loaded with long poles which were protruding outside the body of the trailer and there was no red light or signal on the truck trailer. There being no space for overtaking the trailer towards the left side because there were ditches, the driver of the car applied brakes and tried to over take the trailer from the right side, the car collided with the truck, as a result of which the occupants of the car received

serious injuries. Devinder Singh and Romesh Kumar died at the spot while Satinder Singh and Raj Kapoor were removed to the Hospital.

15. In the Claim Petition bearing No. 63 of 1988/1990 which has been filed by Raj Kapoor, it is alleged that he had sustained head injury and he remained unconscious from 26.2.1988 to 2.3.1988 and suffered brain injury which had weakened his memory and stitches were applied on his head and fore-head. He claimed that he had become permanently disabled because of the injuries suffered in the accident and has sought compensation of Rs.10 Lakhs on account of the injuries sustained by him in the accident. Satinder Singh, claimant, averred that he had suffered head injury besides other injuries and remained admitted upto 28.2.1988 in PGI, Chandigarh. He further alleged that he remained under medical treatment upto 12.4.1988 and under observation as out door patient in PGI Chandigarh and Civil Hospital, Dharamshala. He alleged that he could not join his duties till 11.04.1988 and joined his duties on 12.04.1988. He has thus sought a compensation of Rs.Six Lakhs.

16. Champa Devi another claimant filed the claim petition bearing No. 64T of 1988 for grant of compensation of Rs.10,00,000/- (Ten Lakhs) on account of death of Romesh Kumar alias Romesh Chand, who was earning Rs.900/- per month as he was working with Idma Laboratory as a private typist.

17. In the third claim petition bearing No. 65T/1988 Sarabjit Kaur widow of Devinder Singh prayed for grant of compensation to the tune of Rs.10 Lakhs on account of Devinder Singh, alleging that prior to his death he was earning Rs.1900/- per month and was working as Senior Field Officer in Idma Laboratory, Chandigarh.

18. The fourth claim petition bearing No.66T of 1988 was filed by Satinder Singh Thakur for grant of compensation to the tune of Rs. Six Lakhs on account of injuries suffered by him in the accident.

19. The fifth claim petition bearing No.67T of 1988/1990 was filed by Idma Laboratory for grant of compensation of Rs. 80,000/- on account of damage caused to the Car. All these claim petitions were consolidated and tried together.

20. Upon notice the respondents put in appearance and contested the claim petitions and controverted the allegations made in the claim petitions. Respondent Nos. 1 and 2 admitted that the truck trailer was being driven by respondent No.2 on the date of the accident but denied that it was going ahead of the car at the relevant time. It was pleaded that the same was parked as the driver of the truck was to enter the State of Haryana from Punjab and an entry to this effect is made on the barrier. When the driver of the truck trailer was coming towards the truck after getting an entry made at the barrier, he saw a car being driven rashly and negligently, all of a sudden struck against the trailer. It was denied that the truck was being driven at the relevant time and had suddenly stopped. Respondent No.3 also took up the stand taken by respondent Nos. 1 and 2. Respondent Nos. 4 and 5 took the plea that the accident took place due to negligence of truck driver, who suddenly stopped the truck.

21. The parties went to trial on the following issues:-

1. Whether respondent Braham Dass caused motor accident on 26.02.1988 in the area of Lalru on Chandigarh-Delhi road by his rash and negligent driving of truck trailer No.CHW-6324 ? OPD.

2) Whether Devinder Singh died as a result of the injuries sustained by him in the accident in question?

3) Whether Sarabjit Kaur and other claimants are entitled to the compensation for the loss of life of Devinder Singh in the accident in question? If so, to what extent and from which of the respondents? OPP.

4) Whether Romesh Kumar died as a result of the injuries sustained by him in the accident in question? OPP.

5) Whether Champa Devi and other claimants are entitled to the compensation for the loss of life of Romesh Kumar in the accident in question? If so, to what amount and from which of the respondents? OPP.

6) Whether claimant Satinder Singh received injuries in the accident in question? If so, is he entitled to compensation for the same and to what extent and from which of the respondents? OPP.

7) Whether claimant Raj Kumar received injuries in the accident in question? If so, is he entitled to compensation for the same and to what extent and from which of the respondents? OPP.

8) Whether Car No. CHA 720 was damaged in the accident in question? OPP.

9) Whether M/S Idma Laboratory claimant is entitled to the compensation for the damage caused to Car No. CHA 720 and if so, to what amount and from which of the respondents? OPP.

10) Relief.

22. Both the parties adduced their evidence in support of all the issues and after hearing learned counsel for the parties, the Motor Accident Claims Tribunal, accepted the claim petitions, as already indicated above.

23. The learned Motor Accident Claims Tribunal discussed issues No. 1,2 , 4 and 8 together and returned the findings on all these issues in favour of the claimants by observing that Satinder Singh and Raj Kapoor suffered injuries in the accident and Devinder Singh and Romesh Kumar died at the spot. Car bearing No. CHA-720 was damaged. On the point of negligence the learned Tribunal held both the drivers of Car No. CHA-720 and Truck Trailer No. CHW-6324, responsible for contributing towards the present accident and the contributory negligence was apportioned in the ratio of 25% : 75%, respectively. While disposing of issues of compensation, the learned Tribunal awarded compensation of Rs.10,000/- each to Raj Kumar and Satinder Singh, whereas the legal heirs of Romesh Kumar deceased were awarded a compensation of Rs.48,000/-. The legal heirs of Devinder Singh deceased were awarded a compensation of Rs.1,44,000/- after deducting 25% compensation on account of contributory negligence of the driver of the car (Devinder Singh). Out of the six F.A.O's, four FAOs bearing Nos. 163. 164, 165 and 166 of 1992 have been filed by owner and driver. F.A.O bearing No. 162 of 1992 was filed by the owner of the truck. FAO bearing No. 421 of 1992 has been filed by Sarabjit Kaur, wherein she has challenged the observation of the learned Tribunal regarding contributory negligence of the two vehicles involved in the accident as well as for enhancement of compensation.

24. Heard.

25. Shri H.S.Gill, Senior Advocate, who represents the appellants in F.A.O. No. 421 of 1992, has challenged the findings of the Tribunal on the ground of contributory negligence. He submitted that the accident in the instant

case is not disputed by the respondents. It is also not disputed that Cement Poles were protruding out of the body of the truck trailer at the time of the accident. The accident took place at 5.30 A.M. Near Lalru barrier when the driver of the truck trailer suddenly applied brakes and the Car driver Devinder Singh who was following hit against the said truck. Therefore, the learned Tribunal has erred in holding that the driver of the car contributed in the accident. Instead the Tribunal should have returned the finding totally against the driver of the truck trailer. Therefore, the observation of the Tribunal that it was the duty of the driver of the car to have kept the car at some distance or that in case of applying of sudden brakes he could control the car, is not the correct observation. He has taken me through the testimony of AW-2 Raj Kapoor, who had stated that at the relevant time the truck was loaded with Cement Poles which were extended upto the back of the trailer. Devinder Singh tried to avoid the accident but he could not take a turn as another truck was seen coming from the opposite direction and in this process the car hit the truck trailer. In the cross-examination, this witness admitted that on reaching the barrier every driver is to show the papers of the vehicle etc. to the incharge of the barrier and an entry in this regard is to be got made. It is also admitted that for getting an entry made at the barrier, the drivers did not park the truck in a proper manner. He however, denied that the driver of the truck trailer was getting his papers checked. Similar is the statement of Satinder Singh PW who was one of the occupants of the car. He has described the manner of the accident as under:-

> "On 26.2.1988 I alongwith Devinder Singh, Romesh Kumar, and Kapoor were going in the car of the company to Delhi. Devinder Singh was driving the car. It was about 5.30 A.M. When we reached near the barrier of Lalru i.e. 25' before the barrier a truck trailer was going ahead of our car. Devinder Singh was diving the Car at a normal speed. The tractor trailer driver applied the brakes to his vehicle suddenly. Again said it was a truck trailer and

not tractor trailer. Electric poles were loaded in the said trailer. Those were building to the extent of 5/6' from the trailer. There was no brake light or red flag on the poles. There was no space on our right hand side, on the road as there were ditches and truck was coming from the opposite direction. We were going on left side. We could not turn our vehicle towards left side as there were ditches and on the right side a truck was coming. There was no other way out for us when the driver of the truck trailer applied the brakes suddenly, there was thick fog and our car collided against the said truck trailer, from behind. We all received injuries and Devinder Singh and Romesh Kumar died at the spot and myself and Kapoor were shifted to the hospital. The car was also damaged in the accident and the accident was caused due to rash and negligent driving of truck trailer. Police visited me in the hospital and got some blank papers signed from me, for registration of FIR. No action was taken by the police against the truck trailer. I remained admitted in the hospital for 15 days in PGI. I spent Rs.25000/30000 on my treatment in the hospital and I remained confined to bed for six months after I was discharged from PGI. I got head injuries and on my left arm. I joined my duties after six months. I was not paid the salary for six months. A part from my service with the company, I used to do my business on commission basis of hosiery work. I used to earn Rs.2000/- from that business. I received no compensation from any quarter what so ever."

26. In rebuttal, respondent Braham Dass, respondent No.2, while appearing as RW-1 deposed as under:-

" My truck was parked at the Lalru barrier which separates

> Punjab and Haryana. I had gone to the check post to get the necessary entries made for entering Haryana from Punjab side. As soon as I turned towards my truck after getting the needful, I saw a car coming at a fast speed with its parking lights on in a zig zag manner and struck against the trailer of my truck which was parked on the extreme left of the road. The red fleshing lights were on including the parking lights of the truck when I went to the checking post of the barrier".

27. After going through the evidence brought on the record, I am of the view that the observations of the learned Tribunal in holding that the driver of the car was also required to drive the vehicle at some distance so that he could control the vehicle in case the vehicle going ahead of it applies brakes. In this way the tribunal has held that the driver of Car bearing No. CHA-720 which was being driven by Devinder Singh was also responsible for causing the accident. After considering the aforesaid evidence, the learned Tribunal has arrived at the conclusion that Devinder Singh driver of Car bearing No. CHA -720 was responsible for contributing the accident with the truck trailer bearing No. CHW-6324 and has rightly apportioned the negligence of the drivers of both the vehicles. The findings recorded by the learned Tribunal on issues No.1,2,4 and 8 does not suffer from any infirmity and the same are hereby affirmed.

28. Shri H.S.Gill, Senior Advocate, contended that in order to prove the income of the deceased Devinder Singh and Raj Kapoor, the claimants examined Sarabjit Kaur AW-1, AW-4 S.S.Saini, Officer Incharge of Idma Laboratory, Chandigarh who stated that Devinder Singh was employed with the Company and was getting a salary of Rs.1900/- per month. Similarly Raj Kapoor was also an employee of the Company and was getting a salary of Rs.625/- per month. According to the learned counsel, the respondents have not cross-examined this witness so far as the income of the deceased as disclosed by AW4- Shri S.S.Saini, Finance Officer is concerned. The contention of the learned counsel appears to be attractive but lack force. Shri S.S.Saini, Finance

Officer of the Company has not produced the salary certificates of both the deceased i.e. Devinder Singh and Raj Kapoor before the Court which was the best peace of evidence to prove the exact income of the deceased In the absence of best evidence available with the claimants and with holding of the same, an adverse inference is drawn against the claimants. The learned Tribunal has rightly assessed the income of Devinder Singh deceased as Rs.1500/- being driver and held the dependency of the claimants as Rs.1000/- per month after deducting the expenses of the deceased and by applying the multiplier of 16, it assessed the compensation of (1000x12x16) = Rs. 1,92,000/-. However, the Tribunal after deducting 25% of the amount on account of contributory negligence due to his rash and negligent driving of car bearing No. CHA-720, awarded an amount of Rs.1,44,000/- as compensation. The learned counsel Shri H.S.Gill, however, submitted that the multiplier adopted in the instant case is on the lower side and the Tribunal should have applied the multiplier of 20 instead of 16. In the instant case the Tribunal has taken into consideration the dependency of the claimant as Rs.1000/- per month and has rightly applied the multiplier of 16. Hence, no interference is called for and the claimants are not entitled to any enhancement of compensation.

29. The learned counsel for the appellants (owner -cum- driver) submitted that once the Tribunal has observed that the driver of the Car bearing No. CHA-720 as well as the driver of truck trailer, have caused the accident due to their contributory negligence and their negligence has been apportioned in the ratio of 25% 75% respectively, in the relief clause the entire amount of compensation has been ordered to be paid by the New India Insurance Company in Claim Petition No. 63, 64, 66 and 67 of 1988. In fact the liability of the compensation should have also been awarded in the same ratio of 25% on the insurance company of the car and 75% on the Insurance Company of the truck-trailer. So far as the appeal filed by Sarabjit Kaur is concerned, the 25% amount from the total amount of compensation has already been deducted due to rash and negligent driving of the deceased.

30. I am in complete agreement with the submission of the learned counsel for the owner and the driver of the truck in question and, accordingly, modify the award passed in the cases of Raj Kapoor, Champa Devi, Satinder Singh and Idma Laboratory and ordered that the compensation shall be apportioned in the ratio of 25% : 75% respectively, i.e. 25% of the awarded amount would be shared by the owner, driver and Insurance Company of Car bearing No. CHA-720 and the 75% amount of the award would be shared by the owner, driver and the Insurance Company of the Truck trailer bearing No. CHW-6324.

31. The appeals bearing No. 162 to 166 of 1992 filed on behalf of owner and driver of truck No. CHW 6324 are partly accepted, on the terms indicated above. The order passed by the Tribunal is modified in the aforesaid F.A.O's.The Insurance Company of truck No. CHW-6324 which has already paid the amount of compensation shall be entitled to recover the amount by filing execution petition, as per the observations made herein above.

32. F.A.O. No. 421 of 1992 filed by Sarabjit Kaur and others is dismissed. There will be no order as to costs.

(R.S.Madan)
Judge

September 25 , 2006.
Malik